

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NICHOLAS MILLER,

Plaintiff,

v.

FRY'S ELECTRONICS, INC.,

Defendant.

ORDER
Civil No. 08-541-HA

HAGGERTY, Chief Judge:

By Opinion and Order [15] issued September 5, 2008, this court advised the parties that plaintiff Nicolas Miller's Motion to Remand to State Court and for an Award of Fees and Costs was granted, and this action would be remanded to the Clackamas County Circuit Court for the State of Oregon following final adjudication to determine a reasonable award of costs and fees to plaintiff. Briefing regarding those fees has been filed and considered by this court.

Plaintiff requests \$5,100.00 as "a reasonable fee for obtaining the court's order remanding this case to Oregon State Court." Pl.'s Cost bill at 2. Plaintiff waives a claim for any costs that were incurred.

Defendant objects to the inclusion of time spent negotiating the possible withdrawal of the removal in calculating the final fee award on grounds that such fees "constitute services [plaintiff's] counsel provided to try to avoid the need for removal." Dft.'s Resp. at 2. Defendant concedes that these negotiations took place "after notice of removal was filed," but asserts that this was merely because the circumstances of the removal were "unusual" and that fees generated by efforts to obtain a stipulated withdrawal should not be compensated. *Id.*

This court concludes that plaintiff's request for \$5,100.00 in fees, and nothing in costs, is reasonable and fairly calculated. The "unusual circumstances" alluded to by defense counsel appear to be solely the result of strategic decisions made by defense counsel in this action. On April 29, 2008, plaintiff's counsel received documents from defendant which alerted counsel that a portion of plaintiff's claim for "vacation wages" might be subject to federal law. Declaration of Gary Abbott Parks in Supp. Mo. Remand, Para. 6. Within four business days of receipt of these documents, plaintiff filed an amended complaint in Clackamas County and shortly thereafter transmitted a facsimile of the amended complaint to defense counsel. This transmission included a cover letter to counsel advising them of the amended filing. Plaintiff's counsel avers that "at every opportunity," he advised opposing counsel that the amended complaint contained no allegations involving "vacation pay" wages, and asserted only one claim – under Oregon state law – for late payment of wages. Park Decl. at Paras. 3-4.

Defense counsel decided to proceed with removing the action. The hours plaintiff's counsel spent subsequent to the filing of the removal generated fees that were earned "as a result of the removal." Under these unusual circumstances, plaintiff is entitled to recover fees

representing the time spent remanding this action, including the hours consumed in attempting to achieve an informal resolution of this matter after the removal was filed.

Defendant makes no other challenge as to the reasonableness of plaintiff's hourly rate and the fee amount generated, and this court's independent analysis finds no grounds to adjust the award requested by plaintiff of \$5,100.00 in fees and no recovery for costs.

CONCLUSION

This court concludes that defendant shall pay plaintiff \$5,100.00 as a reasonable award of fees. This action is now remanded to the Clackamas County Circuit Court for the State of Oregon.

IT IS SO ORDERED.

DATED this 24 day of October, 2008.

/s/ Ancer L. Haggerty
Ancer L. Haggerty
United States District Judge